

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 2020 OF 1990

The Board of Trustees of the Port ]  
of Bombay A Body Corporate ]  
constituted under the Provisions ]  
of the Major Port Trust Act, 1963, ]  
as amended by the Major Port ] .. Plaintiff  
Trusts (Amendment) Act, 1974, ]  
having its principal place of ]  
Business at 'Vijay Deep' Shoorji ]  
Vallabhdas Marg, Bombay - 400 038. ]

V/s.

Munir Ahmed Khan, ]  
Indian Inhabitant, ]  
Residing at 3282, Kazipada, ] .. Defendant  
Nashik City, ]  
Pin Code - 422 001. ]

Mr.U.J.Makhija with Mr.Parag Khandhar i/b. Mulla &  
Mulla for the Plaintiff.  
None present for Defendant.

CORAM : R.Y.GANOO, J.

DATED : 30TH SEPTEMBER, 2008

ORAL JUDGMENT :-

. Heard Mr.U.J.Makhija for the Plaintiff. None  
for the Defendant

2. The Plaintiffs being the Board of Trustees of

the Port of Bombay are governed by the provisions of Major Port Act (herein after referred to as the said Act). The Defendant is consignee in respect of a motor car model Honda. The Plaintiffs have instituted the suit to recover from the Defendant Rs.63,900/- alongwith the interest on Rs.53,258.40 @ Rs.15 % p.a. from the date of the suit and for costs.

3. The Plaintiffs have approached this Court with a stand that the suit car was imported under Item No.9 of Import General Manifest (IGM) No.612 dated 4th March, 1987 through Vessel M.V.Tilia. The Plaint shows that the General landing date was 2nd March, 2008 and the last free date was 5th May, 1987. The Defendant should have taken the delivery of the car within seven days of the date of landing and the Defendant failed to do so. According to the Plaintiffs on 22nd September, 1987 the Additional Collector of Customs, Bombay under section 111 (d) of the Customs Act passed an order of confiscation of the said car. Hence, the Plaintiffs have instituted the suit on 8th January, 1990 for recovery of the wharfage and demurrage charges from 5th March 1987 being the

last free date upto 22nd September, 1987 being the date of the confiscation order.

4. The Defendant has contested the suit by filing the Written Statement and has raised the contentions such as :-

(a) The suit is bared by the period of limitation, (b) the Plaintiffs have a lien over the suit car, (c) the Defendant was not an importer and hence the Defendant is not liable to pay the charges, (d) that the Defendant is not the owner of the car.

Based on the pleadings issues came to be framed on 17th July, 2008. Answer to each of the issue is mentioned against the respective issue.

#### ISSUES

#### FINDINGS

1. Whether the Plaintiffs prove that the Defendant is the owner of the suit consignment with in the meaning of section 2(o) of the Major Port Trust Act, 1963 as stated in paragraph 5 of the	In the
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Plaint?	Affirmative
2. Whether the Plaintiffs prove that the pre-confiscation charges of suit consignment amounted to Rs.53,258.40/- as stated in paragraph 7 of the Plaint ?	As per final order.
3. Whether the Plaintiffs are entitled to recover the amount of Rs.53,258.40/- being the pre-confiscation port trust charges in respect of suit consignment together with a sum of Rs.10,641.60/- being interest @ 15 % p.a. from 11-8-1988 till 15-12-1989 aggregating to Rs.63,900/- as stated in paragraph 10 of the Plaint ?	As per final order.
4. Whether the Defendant proves that the suit is bad for non-joinder of necessary parties as alleged in paragraph 2 of the written statement ?	In the Negative.
5. Whether the Defendants prove that the Plaintiffs are guilty of delay and gross negligence for not selling/disposing the suit consignment with in time framed as mentioned in section 61 and 62 of the Major Port Trust Act, 1963 as alleged in paragraph Nos. 6 and 7 of the written statement ?	In the Negative.
6. To what relief, if any, are the Plaintiffs entitled to ?	As per final order.
7. What order and Generally ?	As per final order.

5. At trial on behalf of the Plaintiffs Mr.E.J.Almeida, gave evidence in his capacity as Assistant Docks Manager. No other witness was examined on their behalf. No witness was examined by the Defendant.

6. Certain documents have been placed before the Court by the Plaintiffs and I shall refer to the said documents at appropriate stage.

7. I have heard the learned Advocate Mr.Makhija for the Plaintiffs . He took me through evidence of Almeida, P.W.1. Almeida P.W.1 has stated that since the car was imported, the Plaintiff could not sell the car for recovery of the demurrage charges and the car could be sold only by the State Trading Corporation. I have perused the paragraph 8 of the evidence affidavit of Mr.Almeida, P.W.1 and I accept the stand of the Plaintiffs that they could not sell the car and realise the Port trust charges.

**ISSUE NO. 1 :-**

8. The Defendant had imported the car vide IGM 612 and the name of the Defendant is shown as a consignee, if that is so, the Defendant will have to be treated as a owner of the car. Even otherwise the Provisions of Section 2(o) of the said Act would also go against the Defendant and the Defendant will have to be styled as an owner of the car as he had imported the car. Accordingly issue No.1 is answered in the affirmative.

**ISSUE NOS. 2 AND 3 :-**

9. These two issues can be considered together keeping in view the evidence placed before the Court. The learned Advocate Mr. Makhija had submitted that the confiscation order was passed on 22nd September, 1987 and therefore, the demurrage charges got crystalised on 22nd September, 1987 in view of the Judgment of this Court in case of **The Board of Trustees of Port of Bombay V/s. M/s.Rainbow Products & Anr, 2007(3)ALL MR.561**. Mr.Makhija had submitted that, the Plaintiffs have filed the suit for recovery of demurrage charges for the period of 5th March, 1987

till 22nd September, 1987. I have gone through the Judgment quoted above and I have heard the learned Advocate Mr.Makhiya.

10. The Plaintiffs have produced before the Court the calculation sheet showing the charges arrived at by the Plaintiffs and those charges are calculated by the Plaintiffs based on Docks scales of charges which is annexed. There is no challenge to the stand of the Plaintiffs as regards the charges towards wharfage and Demurrage. The Plaintiffs have claimed Rs.264.80 as wharfage charges and Rs.52,960/- as demurrage and to that extent the claim of the Plaintiffs will have to be granted. The Plaintiffs have claimed Rs.33.60 towards sale ware housing charges. The evidence of Almeida P.W.1 no where gives an explanation for charging Rs.33.60 as a sale wherehousing charges and to that extend the case of the Plaintiffs will have to be negatived. Hence, the Plaintiffs will be entitled to recover from the Defendant Rs.53224.80 as wharfage charges.

11. The Plaintiffs have claimed interest @ 15 %

p.a. as per notice at Exh.P.4. In the evidence of Almeida , P.W.1., except asking for interest @ 15 % p.a., there is no explanation or material to show as to why the interest @ 15 % is charged. Considering the relevant dates namely the last free date as 5th March, 1987 and the confiscation order dated 22nd September, 1987, I am inclined to observe that if interest @ 12 % is granted on Rs.53,224.80 from 11th August, 1988 being the date of the demand till filing of suit, the interest of justice would be met with. Thus, Plaintiffs can recover interest @ 12 % p.a. up to the date of the filing of the suit i.e. up to 17th January, 1990 as the suit has been filed on 18th January, 1990. So far as the interest after the filing of the suit in view of provisions of section 34 of the Code of Civil Procedure, the Plaintiffs can be granted interest @ 6 % p.a. on Rs.53,224.80. The Plaintiffs will be entitled to the costs of the suit. Hence, issue No.2 and 3 are decided as per the final order.

**ISSUE NO.4 :-**



12. It was necessary for the Defendant to discharge the burden on the question of non joinder of necessary parties, no steps have been taken by the Defendant in that behalf and hence, issue No.4 is answered in the negative.

**ISSUE NO.5 :-**

13. Issue No.5 pertains to question of delay on the part of the Plaintiffs in disposing of the suit car. In so far as this aspect is concerned, Almeida, P.W.1 has categorically stated in his evidence that car could not be sold by the Plaintiffs and such a sale could be conducted by State Trading Corporation only. Thus, the evidence of Almeida, P.W.1 has gone unchallenged and therefore, the Defendant has not been able to show that there has been delay or negligence on the part of the Plaintiffs on the question of the sale of the car because the Plaintiff was prohibited from selling the car. Hence, issue No.5 is answered in the negative.

**ISSUE NOS. 6 AND 7 :-**

14. Issue Nos. 6 and 7 are being decided as per the operative part, keeping in view the very nature of the issues.

15. For the reasons mentioned aforesaid, I pass the following decree :

**:: O R D E R ::**

i. The Defendant do pay to the Plaintiffs Rs.53,224.80. The Defendant do pay to the Plaintiffs interest @ 12 % p.a. from 11th August, 1988 till 17th January, 1990 on Rs.53,224.80. The Defendant do pay to the Plaintiffs interest @ 6 % p.a. from 18th January, 1990 till realisation on Rs.53,224.80.

ii. The Defendant do pay to the Plaintiffs costs of the suit.

( R . Y . G A N O O , J . )